

110TH CONGRESS
1ST SESSION

S. 1870

To amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2007

Mr. FEINGOLD (for himself, Mr. LAUTENBERG, Mr. LEVIN, Mr. KERRY, Mr. LIEBERMAN, Mrs. BOXER, Mr. MENENDEZ, Mr. SANDERS, Mr. CARDIN, Mr. DURBIN, Mr. REED, Mr. DODD, Mr. KOHL, Mr. WHITEHOUSE, Ms. STABENOW, Mr. CARPER, Mr. WYDEN, Mr. LEAHY, Mr. BROWN, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Restora-
5 tion Act of 2007”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are as follows:

1 (1) To reaffirm the original intent of Congress
2 in enacting the Federal Water Pollution Control Act
3 Amendments of 1972 (86 Stat. 816) to restore and
4 maintain the chemical, physical, and biological integ-
5 rity of the waters of the United States.

6 (2) To clearly define the waters of the United
7 States that are subject to the Federal Water Pollu-
8 tion Control Act (commonly known as the “Clean
9 Water Act”).

10 (3) To provide protection to the waters of the
11 United States to the fullest extent of the legislative
12 authority of Congress under the Constitution.

13 **SEC. 3. FINDINGS.**

14 Congress finds the following:

15 (1) Water is a unique and precious resource
16 that is necessary to sustain human life and the life
17 of animals and plants.

18 (2) Water is used not only for human, animal,
19 and plant consumption, but is also important for ag-
20 riculture, transportation, flood control, energy pro-
21 duction, recreation, fishing and shellfishing, and mu-
22 nicipal and commercial uses.

23 (3) Through prior enactments, Congress estab-
24 lished the national objective of restoring and main-
25 taining the chemical, physical, and biological integ-

1 rity of the waters of the United States and recog-
2 nized that achieving this objective requires uniform,
3 minimum national water quality and aquatic eco-
4 system protection standards to restore and maintain
5 the natural structures and functions of the aquatic
6 ecosystems of the United States. Since the 1970s,
7 the definitions of “waters of the United States” in
8 the U.S. Environmental Protection Agency’s and the
9 U.S. Army Corps of Engineers’ regulations have
10 properly established the scope of waters needed to be
11 protected by the Federal Water Pollution Control
12 Act (33 U.S.C. 1251 et seq.) in order to meet the
13 national objective.

14 (4) Water is transported through inter-
15 connected hydrologic cycles, and the pollution, im-
16 pairment, or destruction of any part of an aquatic
17 system may affect the chemical, physical, and bio-
18 logical integrity of other parts of the aquatic system.

19 (5) Protection of intrastate waters is necessary
20 to restore and maintain the chemical, physical, and
21 biological integrity of all waters in the United
22 States.

23 (6) The regulation of discharges of pollutants
24 into intrastate waters is an integral part of the com-

1 prehensive clean water regulatory program of the
2 United States.

3 (7) Small and intermittent streams, including
4 ephemeral and seasonal streams, comprise the ma-
5 jority of all stream miles in the United States and
6 serve critical biological and hydrological functions
7 that affect entire watersheds. These waters reduce
8 the introduction of pollutants to large streams and
9 rivers, provide and purify drinking water supplies,
10 and are especially important to the life cycles of
11 aquatic organisms and the flow of higher order
12 streams during floods.

13 (8) The pollution or other degradation of wa-
14 ters of the United States, individually and in the ag-
15 gregate, has a substantial relation to and effect on
16 interstate commerce.

17 (9) Protection of intrastate waters is necessary
18 to prevent significant harm to interstate commerce
19 and sustain a robust system of interstate commerce
20 in the future.

21 (10) Waters, including streams and wetlands,
22 provide protection from flooding. Draining or filling
23 intrastate wetlands and channelizing or filling intra-
24 state streams can cause or exacerbate flooding that

1 causes billions of dollars of damages annually, plac-
2 ing a significant burden on interstate commerce.

3 (11) Millions of people in the United States de-
4 pend on streams, wetlands, and other waters of the
5 United States to filter water and recharge surface
6 and subsurface drinking water supplies, protect
7 human health, and create economic opportunity.
8 Source water protection areas containing small or
9 intermittent streams provide water to public drink-
10 ing water supplies serving more than 110 million
11 Americans.

12 (12) Millions of people in the United States
13 enjoy recreational activities that depend on intra-
14 state waters, such as waterfowl hunting, bird watch-
15 ing, fishing, and photography, and those activities
16 and associated travel generate hundreds of billions
17 of dollars of income each year for the travel, tour-
18 ism, recreation, and sporting sectors of the economy
19 of the United States.

20 (13) Activities that result in the discharge of
21 pollutants into waters of the United States are com-
22 mercial or economic in nature. More than 14,000 fa-
23 cilities with individual permits issued in accordance
24 with the Federal Water Pollution Control Act (33
25 U.S.C. 1251 et seq.), including industrial plants and

1 municipal sewage treatment systems, discharge into
2 small or intermittent streams.

3 (14) States have the responsibility and right to
4 prevent, reduce, and eliminate pollution of waters,
5 and the Federal Water Pollution Control Act re-
6 spects the rights and responsibilities of States by
7 preserving for States the ability to manage permit-
8 ting, grant, and research programs to prevent, re-
9 duce, and eliminate pollution, and to establish stand-
10 ards and programs more protective of a State's wa-
11 ters than is provided under Federal standards and
12 programs.

13 (15) Protecting the quality of and regulating
14 activities affecting the waters of the United States
15 is a necessary and proper means of implementing
16 treaties to which the United States is a party, in-
17 cluding treaties protecting species of fish, birds, and
18 wildlife.

19 (16) Protecting the quality of and regulating
20 activities affecting the waters of the United States
21 is a necessary and proper means of protecting Fed-
22 eral land, including hundreds of millions of acres of
23 parkland, refuge land, and other land under Federal
24 ownership and the wide array of waters encompassed
25 by that land.

1 (17) Protecting the quality of and regulating
2 activities affecting the waters of the United States
3 is necessary to protect Federal land and waters from
4 discharges of pollutants and other forms of degrada-
5 tion.

6 **SEC. 4. DEFINITION OF WATERS OF THE UNITED STATES.**

7 Section 502 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1362) is amended—

9 (1) by striking paragraph (7);

10 (2) by redesignating paragraphs (8) through
11 (24) as paragraphs (7) through (23), respectively;
12 and

13 (3) by adding at the end the following:

14 “(24) WATERS OF THE UNITED STATES.—The
15 term ‘waters of the United States’ means all waters
16 subject to the ebb and flow of the tide, the territorial
17 seas, and all interstate and intrastate waters and
18 their tributaries, including lakes, rivers, streams (in-
19 cluding intermittent streams), mudflats, sandflats,
20 wetlands, sloughs, prairie potholes, wet meadows,
21 playa lakes, natural ponds, and all impoundments of
22 the foregoing, to the fullest extent that these waters,
23 or activities affecting these waters, are subject to the
24 legislative power of Congress under the Constitu-
25 tion.”.

1 **SEC. 5. CONFORMING AMENDMENTS.**

2 The Federal Water Pollution Control Act (33 U.S.C.
3 1251 et seq.) is amended—

4 (1) by striking “navigable waters of the United
5 States” each place it appears and inserting “waters
6 of the United States”;

7 (2) in section 304(l)(1) by striking “NAVIGABLE
8 WATERS” in the heading and inserting “WATERS OF
9 THE UNITED STATES”; and

10 (3) by striking “navigable waters” each place it
11 appears and inserting “waters of the United
12 States”.

13 **SEC. 6. SAVINGS CLAUSE.**

14 Nothing in this Act shall be construed as affecting
15 the authority of the Administrator of the Environmental
16 Protection Agency or the Secretary of the Army under the
17 following provisions of the Federal Water Pollution Con-
18 trol Act (33 U.S.C. 1251 et seq.):

19 (1) Section 402(l)(1), relating to discharges
20 composed entirely of return flows from irrigated ag-
21 riculture.

22 (2) Section 402(l)(2), relating to discharges of
23 stormwater runoff from certain oil, gas, and mining
24 operations composed entirely of flows from precipita-
25 tion runoff conveyances, which are not contaminated
26 by or in contact with specified materials.

1 (3) Section 404(f)(1)(A), relating to discharges
2 of dredged or fill materials from normal farming,
3 silviculture, and ranching activities.

4 (4) Section 404(f)(1)(B), relating to discharges
5 of dredged or fill materials for the purpose of main-
6 tenance of currently serviceable structures.

7 (5) Section 404(f)(1)(C), relating to discharges
8 of dredged or fill materials for the purpose of con-
9 struction or maintenance of farm or stock ponds or
10 irrigation ditches and maintenance of drainage
11 ditches.

12 (6) Section 404(f)(1)(D), relating to discharges
13 of dredged or fill materials for the purpose of con-
14 struction of temporary sedimentation basins on con-
15 struction sites, which do not include placement of fill
16 material into the waters of the United States.

17 (7) Section 404(f)(1)(E), relating to discharges
18 of dredged or fill materials for the purpose of con-
19 struction or maintenance of farm roads or forest
20 roads or temporary roads for moving mining equip-
21 ment in accordance with best management practices.

22 (8) Section 404(f)(1)(F), relating to discharges
23 of dredged or fill materials resulting from activities
24 with respect to which a State has an approved pro-
25 gram under section 208(b)(4) of such Act meeting

- 1 the requirements of subparagraphs (B) and (C) of
- 2 that section.

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